

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM L. LOWRIE,

Plaintiff-Appellant,

v

KAREN A. LOWRIE,

Defendant-Appellee.

UNPUBLISHED

October 18, 2005

No. 256631

Mason Circuit Court

LC No. 02-000538-DO

Before: O’Connell, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Plaintiff appeals as of right the judgment of divorce entered by the trial court. The focus of this appeal regards the division of property. The parties stipulated with respect to most of the issues that ordinarily arise in divorce actions, but they could not reach agreement on a few matters relative to the distribution of the marital estate. These outstanding issues were presented to the trial court for resolution on submission of briefs; no evidentiary hearing or trial was conducted. We vacate, in part, the judgment of divorce and remand.

As framed by plaintiff, the arguments presented on appeal are (1) that the trial court erred in dividing plaintiff’s anticipated social security benefits in an attempt to equalize future social security income, (2) that the trial court erred by invading inherited property and awarding some of it to defendant, and (3) that the trial court erred in refusing to compensate plaintiff for living expenses paid for the benefit of defendant during the pendency of the divorce action. Although not referenced in plaintiff’s appellate brief in the “statement of questions involved,” he also argues that the trial court erred by not equalizing the parties’ IRA investment accounts.

Questions of law, such as whether federal preemption is applicable and statutory construction, are reviewed de novo. *Thomas v United Parcel Service*, 241 Mich App 171, 174; 614 NW2d 707 (2000). In divorce actions, findings of fact made in relation to the division of marital property are reviewed under the clearly erroneous standard. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). The trial court’s dispositional ruling should be affirmed unless we are left with a firm conviction that the division was inequitable. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993).

In regard to the social security issue, the judgment of divorce contained the following provision:

II. PROPERTY SETTLEMENT

* * *

E. DIVISION OF SOCIAL SECURITY BENEFITS

IT IS FURTHER ORDERED AND ADJUDGED that the parties' social security benefits shall be totaled, including any and all yearly appreciations, and the total divided equally so that each party receives an equal monthly amount. Plaintiff shall send directly to Defendant, on a monthly basis, 50% of his social security income or benefits beginning with his June 2004 social security check(s). Plaintiff's obligation shall continue until Defendant is eligible to receive social security benefits, at which time Plaintiff will pay Defendant one-half of the difference between his social security income and Defendant's social security income, so that the parties will continue to receive an equal amount of social security income on a monthly basis. The parties will keep each other informed of the amount of social security benefits received by each, and any increases or changes in benefits, so that the parties maintain an equal allocation of monthly social security benefits.

The trial court's decision to divide plaintiff's future anticipated social security benefits in an attempt to equalize the parties' monthly social security incomes as part of the property distribution was invalid as the doctrine of federal preemption precluded the court from ruling in a manner contrary to the Social Security Act. 42 USC 407(a); *Philpott v Essex Co Welfare Bd*, 409 US 413, 417; 93 S Ct 590; 34 L Ed 2d 608 (1973)(§ 407 imposes broad bar against use of any legal process to reach social security benefits); *Hisquierdo v Hisquierdo*, 439 US 572; 99 S Ct 802; 59 L Ed 2d 1 (1979); *Konynenbelt v Flagstar Bank, FSB*, 242 Mich App 21, 25; 617 NW2d 706 (2000)(federal law preempts state law where Congress so intends); *Eickelberger v Eickelberger*, 93 Ohio App 3rd 221, 226-227; 638 NE2d 130 (1994)(state court has no authority to divide social security benefits which are controlled by federal law). Accordingly, the social security-property division paragraph in the judgment of divorce is vacated.

On much reflection, we decide not to address the substantive validity of the trial court's rulings on the issues of inheritance, compensation for living expenses, and equalization of the parties' respective IRAs. Rather, in light of our ruling on the social security issue, we deem it appropriate to vacate the judgment of divorce with respect to those matters and allow the trial court to reconsider them because, had the court originally taken the position that the social security benefits were not subject to division, it possibly would have impacted the court's decision regarding the inheritance, the IRAs, and compensation for living expenses. In property division matters, a ruling with regard to one asset typically impacts a ruling on other assets, all as part of the court's attempt to fashion an equitable distribution of property. While the courts have developed various factors to be considered in dividing marital property, there are no set statutory rules, and the overriding principle is that the division must be equitable. See *Sparks, supra* at 158-163. Additionally, and again for purposes of equity, we shall give the trial court the opportunity to consider and affix spousal support if it so desires under the circumstances of this case, keeping in mind the parties' future income flows, the property division, principles of equity, and any case law or statutory provisions concerning spousal support.

We do, however, provide some parameters on remand. First, the future anticipated social security benefits may be taken into consideration in a general sense when the court renders its ruling relative to property division. See *In re Marriage of Boyer*, 538 NW2d 293, 295-296 (Iowa 1995)(no direct division of benefits, nor indirect division by way of setoff, but court may make general adjustment in dividing marital property on the basis that one party will be receiving more in social security benefits). Likewise, as to spousal support, the trial court may take into consideration the parties' social security benefits. See MCL 552.602(n)(ii)(defining "income" relative to support matters as including "[a] payment due or to be due in the future to an individual from . . . social security"); *Hatcher v Hatcher*, 129 Mich App 753, 761; 343 NW2d 498 (1983);¹ *In re Marriage of Hulstrom*, 342 Ill App 3rd 262, 268-269; 794 NE2d 980 (2003)(42 USC 659(a)'s alimony exception to anti-alienation rule of 42 USC 407(a) renders "the settlement agreement's purported division of social security benefits valid only if the parties intended the transfer to be maintenance rather than a property division").

Next, we find that the inheritance issue was properly before the trial court, and thus it can be considered again on remand. The parties' stipulation opaquely referenced plaintiff's retirement investment accounts and outlined the unresolved "main issues," which left the court to rely on the briefs to divine the unresolved issues. The stipulation did not exclude the issue of inheritance from the court's consideration. Moreover, the parties' briefs indicated that they had not reached an agreement on the issue and extensively developed the arguments on the question of whether the inheritance should be divided.

Additionally, on remand the trial court is to be guided by the following principles regarding the inheritance issue. "Normally, property received by a married party as an inheritance, but kept separate from marital property, is deemed to be separate property not subject to distribution." *Dart v Dart*, 460 Mich 573, 584-585; 597 NW2d 82 (1999). There are, however, two statutory exceptions to the general rule that separately-maintained, inherited property is not subject to division, MCL 552.23(1)(insufficient marital assets for suitable support and maintenance) and MCL 552.401(contribution by non-inheriting spouse to the acquisition, improvement, or accumulation of property). Keeping these principles in mind, the court shall proceed accordingly.

Finally, we wish to make clear that the parties are not prohibited from further entering into additional stipulations that might resolve the matters discussed above.

¹ In *Hatcher*, *supra* at 761, this Court, holding that the trial court did not abuse its discretion in awarding spousal support, stated in support of the ruling:

Although both were in good health and employed at the time of trial, defendant earned over twice as much as plaintiff. Plaintiff had worked only occasionally during the marriage. Her dental assistant career had just begun, at a rate of pay lower than that of other jobs she had held. While she would be eligible for social security benefits upon her retirement, the amount of such benefits would be substantially less than what defendant would receive from the combination of social security benefits and benefits from his pension.

The judgment of divorce is vacated in part, and we remand for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Peter D. O'Connell

/s/ David H. Sawyer

/s/ William B. Murphy